IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

FRIDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WRIT PETITION No.7045 of 2006

Between:

Sri Nooka Raju **… Petitioner**

Versus

M/s. State Bank of Hyderabad,
Represented by its Branch Manager,
Tuni Branch, East Godavari district
& Ors. **…**
Respondents

Counsel for the Petitioner: **Sri A. Narasimha Rao**

Counsel for the Respondents: **Sri Krishnam Raju**

O R D E R :

This Court issued notice before admission on 10-4-2006 and pending further orders interim stay was granted in WPMP.No.9078 of 2006.

Subsequent thereto on 10-7-2006 Rule Nisi was issued and further the interim order granted earlier was continued until further orders. WVMP.No.590 of 2007 is filed to vacate the interim order.

2. With the consent of the counsel on record, the writ petition itself is taken up for final hearing and the same is disposed of finally.

3. The writ petition is filed for a writ of mandamus to declare the notice of auction issued by the second respondent dated 01-4-2006, published in "Eenadu" daily on 03-4-2006, proposing to auction the property with boundaries 300 sq.yards site single storied with tiles roof bearing No.D.No.8-9-57, Peddaveedhi, Tuni, as the same illegal, arbitrary and opposed to principles of natural justice and to pass such other suitable order as this court may deem fit and proper in the circumstances of the case.

4. It is stated that the petitioner borrowed an amount of Rs.3,50,000-00 (Rs.three lakhs fifty thousand only) from the first respondent for the purpose of developing his business. The petitioner, during the course of business had suffered heavy losses. The petitioner, therefore, could not repay the amount borrowed.

5. It is further stated that when the respondent-bank tried to invoke the provisions of Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'), the petitioner herein filed WP.No.17496 of 2003 seeking a declaration that the Act as invalid, oppressive and violative of the petitioner guaranteed

under the constitution of India and consequently to declare the notice dated 15-2-2003 issued by the second respondent under section 13 (2) of the Act, as arbitrary, unconstitutional and for other reliefs. Writ Petition was dismissed by this court by an order dated 19-4-2004, following the judgment of Hon'ble Supreme Court, giving liberty to the petitioner to work out his remedies as provided under the Act, including filing of appeal under Section 17 of the Act, within the period of limitation prescribed therefore, to be counted from the date of the order. The copy of the order is filed as annexure-I to this writ petition.

6. It is further stated that the petitioner filed Appeal No.19 of 2004 before the Debts Recovery Tribunal, Visakhapatnam. Along with the said appeal, the petitioner also filed application seeking interim injunction restraining the respondent-bank from alienating the property till disposal of the appeal. In the said appeal in IR.No.4298 of 2004, the Debts Recovery Tribunal, Visakhapatnam passed an order on 21-7-2004, holding that there is a delay in filing appeal and the petitioner shall file application to condone the delay and seven days time was granted for the same. The copies of the appeal preferred by the petitioner and the order passed by the Tribunal are filed as annexure-2 and 3 to this writ petition.

7. It is also further stated that in pursuance of the direction passed by the Debts Recovery Tribunal, dated 21-7-2004 the petitioner filed an application

seeking condonation of delay of 41 days in preferring the appeal. The respondent-bank filed counter to the said application. The copies of the application to condone delay and counter are filed as annexures-4 and 5 to this writ petition.

8. It is also stated that there is no Presiding Officer, presiding over the Debts Recovery Tribunal, Visakhapatnam. The Presiding Officer, Debts Recovery Tribunal, Hyderabad, is presiding over Visakhapatnam Tribunal approximately two days in a month and most of the matters are being adjourned from time to time. The appeal preferred by the petitioner is also being adjourned for the same reason from time to time. The applications to condone delay and also seeking injunction restraining the respondent-bank from alienating the properties pending appeal are also pending and so far no orders have been passed.

9. While things stood thus, the petitioner was shocked when they came to know that the second respondent issued auction sale notice dated 01-4-2006 which is impugned in the present writ petition. The petitioner submits that the action of second respondent in issuing impugned notice especially when the applications filed by the petitioner are pending is highly arbitrary.

10. It is further stated that Section 17 of the Act, provides any person aggrieved by any of the measures referred to sub-section 4, of Section 13 taken by the Secured Creditor, may prefer appeal within 40 days from the date on which such measures had been taken. Section 17 (5) further

provides that any application made under sub-section (1) shall be dealt with by the Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application and the total period of pendency shall not exceed four months. Sub-section (6) of Section 17 provides that if the application is not disposed of by the Tribunal within the period of four months the party to the application may make an application to the appellate tribunal on such application, the appellate tribunal may make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

11. It is further stated that there is no Presiding Officer presiding over the Tribunal at Visakhapatnam. Even if the petitioner invokes Section 17 (6) of the Act, no purpose would be served, since there is no Presiding Officer at Visakhapatnam. Section 17 (6) only provides that Appellate Tribunal can direct the Debts Recovery Tribunal to make an order for expeditious disposal of the application. Thus, the petitioner had no other alternative effective remedy except to approach this Court under Article 226 of the Constitution of India.

12. On the other hand, in the counter-affidavit filed to vacate the interim order, it is stated that it is a matter of record that the petitioner borrowed an amount of Rs.3,50,000/- from their branch in order to meet the petitioner's financial requirement relating to his business. It is hereby denied that the petitioner suffered heavy losses during the course of business and

consequently the petitioner could not repay the amount borrowed.

13. It is a matter of record that the Bank initiated action under SERFASEI Act and petitioner filed WP.No.17496 of 2003 questioning the validity of the said Act and the said Writ Petition was dismissed by this Court as per order dated 19-4-2004 giving liberty to the petitioner to work out his remedies as provided under SERFASEI Act.

14. It is a matter of record that the petitioner filed an Application No.19/04 before the Debt Recovery Tribunal, Visakhapatnam and filed an application seeking interim injunction restraining the Bank in alienating the property till disposal of appeal and the Debt Recovery Tribunal passed an order on 21-7-2004 holding that there is a delay in filing the appeal and the petitioner shall file an application to condone the delay and the Tribunal granted seven days time to comply the same.

15. Several other facts also had been narrated in paragraph nos.7, 8 and 9 of the counter-affidavit.

16. In paragraph no.11 of the counter-affidavit, it is stated that the Presiding Officer, Debt Recovery Tribunal, Hyderabad was acting as in-charge during the relevant time and conducting the proceedings relating to the cases pending on the file of Debt Recovery Tribunal, Visakhapatnam, if any, application is moved seeking urgent orders. But the petitioner did not make any such application seeking stay of further proceedings in the

application filed by him under section 17. The ground urged by the petitioner to file the writ petition is not tenable, as he could have filed an application for advancement of the case and pass orders in his interim applications but the petitioner for the reasons best known to him, has not moved any such kind of application. Therefore, the contention of the petitioner that he had no alternative remedy except to approach this Court under Article 226 of the Constitution of India, is not valid and justified in the facts and circumstances of the case, as detailed above. Further more, at present there is a regular Presiding Officer is posted to Debt Recovery Tribunal, Visakhapatnam, before whom the petitioner's appeal under section 17 is pending. On this ground also the present writ petition become infructuous.

17. Certain other further facts had been narrated in the counter-affidavit as well. As can be seen from the respective stand taken by the parties, the main ground on which the writ petition had been moved at the relevant point of time, there was no Presiding Officer. But however, the fact appears to be other wise. Even during the relevant period, there was in-charge Presiding Officer. Be that as it may, there is a regular Presiding Officer for the present.

18. In view of the same, this Court is of the considered opinion that the writ petition became infructuous and accordingly the same is hereby closed. No costs.

JUSTICE P . S . NARAYANA .

14/09/2007

ISL